

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

RICHARD THOMPSON, a Nevada resident; )  
KEVIN BATTERSHELL, a California )  
resident, )

3:11-cv-00644-LRH-WGC

Plaintiffs, )

ORDER

v. )

KEVIN LAKE, a Nevada resident; ERIC )  
MARCONATO, a Nevada resident; )  
ANTHONY MARCONATO, a Nevada )  
resident; JAMES ADHUNKO, a Nevada )  
resident; CHRIS ROWE, a Nevada resident; )  
WESLEY KELLER, a Nevada resident; the )  
CITY OF SPARKS, NEVADA, )

Defendants. )

Before the court is Defendants' Demand for Security for Costs (#9<sup>1</sup>) pursuant to NRS § 18.130(1). Plaintiff Kevin Battershell filed an opposition (#10), to which Defendants replied (#11).

This is civil rights action under 42 U.S.C. § 1983 and Nevada law. It arises out of an incident on September 8, 2009, on Highway 95 near Fernley, Nevada, in which Plaintiffs Richard Thompson and Kevin Battershell allegedly were nearly run off the road by two vehicles and, after

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<sup>1</sup>Refers to the court's docket entry number.

1 they caught up to the vehicles at a stop light and attempted to make contact with one of the drivers,  
2 they discovered the vehicles were unmarked police vehicles occupied by six Sparks police officers  
3 dressed in plain clothes who pulled guns on them. Battershell was cited by a Lyon County Sheriff's  
4 deputy for assault upon the driver, but the charges were later dropped. Thompson and Battershell  
5 then filed this action on September 2, 2011. In their First Amended Complaint (#5), filed on  
6 December 5, 2011, they allege causes of action for (1) violations of their constitutional rights under  
7 § 1983, (2) assault, (3) battery, (4) false imprisonment, (5) malicious prosecution, (6) respondeat  
8 superior liability against the City of Sparks.

9 On January 3, 2012, Defendants filed the instant demand for security for costs pursuant to  
10 NRS § 18.130(1), which provides in pertinent part: "When a plaintiff in an action resides out of the  
11 State, . . . security for costs and charges which may be awarded against such plaintiff [not to exceed  
12 \$500] may be required by the defendant, by the filing and service on plaintiff of a written demand  
13 therefor within the time limited for answering the complaint. When so required, all proceedings in  
14 the action shall be stayed" until such security is given. Relying principally on *Truck Ins. Exch. v.*  
15 *Tetzlaff*, 683 F. Supp. 223, 227 (D. Nev. 1988), Defendants accordingly demand that Plaintiff  
16 Battershell, who is a resident of California, provide each of the seven named defendants with  
17 security for costs in the amount of \$500 per defendant, totaling \$3,500.

18 "It has been the policy of the United States District Court for the District of Nevada to  
19 enforce the requirements of NRS § 18.130 in diversity actions." *Hamar v. Hyatt Corp.*, 98 F.R.D.  
20 305 (D. Nev. 1983); *accord Simulnet E. Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 574  
21 (9th Cir. 1994). However, "[w]hen suit is brought under a federal statute, state provisions requiring  
22 security for costs or expenses clearly are inapplicable." Wright, Miller, Kane & Marcus, *Federal*  
23 *Practice and Procedure* § 2671 (3d ed.) (footnotes omitted). Instead, the court may apply its own  
24 rules or state practice to require security for costs as a discretionary matter, taking into account the  
25 policy of the underlying federal statute, the defendant's ability to recover costs from an out-of-state  
26

1 plaintiff if the defendant prevails, the plaintiff's solvency, and any other pertinent factors. *Id.*

2 This is not a diversity action. Instead, it arises under this court's original jurisdiction over  
3 § 1983 actions and supplemental jurisdiction over Plaintiffs' pendent state law claims.  
4 Furthermore, this court has not adopted a rule or practice relating to security for costs in federal  
5 question actions. Whether to require security for costs therefore remains within the court's sound  
6 discretion.

7 Here, the court finds that it would be contrary to the strong public policies underlying the  
8 federal civil rights laws to automatically require security for costs under NRS § 18.130, even where  
9 as here the action includes pendent state law claims. Furthermore, Defendants have made no  
10 attempt to present grounds for requiring security for costs on the facts of this case. Instead, they  
11 merely argue that, as a matter of law, the court's practice of applying NRS § 18.130 in diversity  
12 actions also governs federal question cases involving pendent state law claims. The court rejects  
13 this argument and, in the absence of any factual showing to justify requiring security for costs in  
14 this case, the court will deny Defendants' demand.

15 IT IS THEREFORE ORDERED that Defendants' Demand for Security for Costs (#9) is  
16 DENIED.

17 IT IS SO ORDERED.

18 DATED this 15th day of February, 2012.



20  
21 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE